

Passing Laws without a Vote: the French Labour Reform and Art. 49-3 of the Constitution

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Ibtissem Guenfoud Do 7 Jul 2016

While the Brits debate over whether a referendum result compels a Sovereign Parliament to call for Article 50, the French have their own doubts on the role of voting: lately, they choose to do without. Yesterday, the National Assembly passed the incendiary labour reform without vote, albeit in full respect of the Constitution. [Article 49-3 of the 1958 Constitution](#) reads that the Government may engage its liability on a text and thus pass it through the Assembly without vote and without debate, provided that no motion of no-confidence succeeds. Once the Government chooses to call upon Article 49-3, there can only be two outcomes: either the law passes through the Assembly, or Government is overthrown.

This is the second time Prime Minister Manuel Valls invokes this paragraph to force the labor law reform through the lower house of parliament. The alternative left-wing movement „Les Frondeurs“ yesterday failed to introduce a motion of no-confidence; they had refused to rally with the opposition.

The reform to justify it all brings three main alterations: it allows work up to 46 hours a week (as opposed to 35 hours before), it permits employers to lower the salary for extra hours and facilitates lay-offs for economical reasons.

Not only did the law provoke large demonstrations in Paris, violent more often than not, which caused extensive damage to private and public property. It also led to strong divisions in the left-wing majority and caused some members to create their own political movements and groups (among them, „Les Frondeurs“ and Emmanuel Macron's „En marche!“). Owing to Article 49-3, the controversial reform passed through the lower house after the first reading.

Les violences institutionnelles réciproques, 49.3 et défiance, sont toujours un échec. Sans débat, la démocratie est un astre mort.

ChT

— Christiane Taubira (@ChTaubira) [5. Juli 2016](#)

„Without debate, democracy is a dead star“, said the resigned Minister of Justice Christiane Taubira on Twitter, who left Government following the salty dispute over deprivation of nationality. However, some argue that, firstly, Article 49-3 permits to [override clientelism among members of the Assembly](#); secondly that it doesn't exactly [prevent the Assembly from debating](#), seeing the law reform is precisely the outcome of parliamentary commissions; thirdly, that the Constitution doesn't leave the Assembly defenseless, since the motion of no-confidence is an appropriate counter-power.

Others, not wholly against the idea, deplore the application of the constitutional tool to the text at hand, supposedly too important to be dealt with in a hurry. Still, to regret its use on controversial laws and claim that it is for that reason undemocratic is nonsensical: polemic laws are the very essence of Article 49-3.

Former Président du Conseil Félix Gaillard was the first to introduce the idea which inspired Article 49-3; it meant to promote stability and give governments the means to pass the laws for which we put them in place. The true power of 49-3 lies there : it allows a government to move the debate from the law to the very existence of the Government.

Yet, members of the Assembly have for a long time hardly been deterred by the idea of overthrowing

Government. The Third and Fourth Republics were the stage of acute governmental instability due to the overuse of this instrument.

The true deterrence is the near-certainty of a dissolution of the National Assembly (Article 12). General De Gaulle reacted thus in 1962, after the success of a motion of no-confidence directed against his constitutional reform, which introduced the election of the President by direct universal suffrage. This was the first and last *motion de censure* to succeed since 1958.

Mostly, Prime Ministers solicit it either to pass budget laws (Michel Debré in 1980), to give the illusion of a solid majority in times of weakness (Raymond Barre after Jacques Chirac's leave), or to fight filibustering (Lionel Jospin in 2006). At its prime, the mistrusted article was used 28 times by Michel Rocard's government. Since Nicolas Sarkozy's 2008 constitutional reform, a government may only use it on one bill per parliamentary session.

Governments, left and right-wing alike, feel the need at some point or other to appeal to the infamous paragraph, in spite of previous engagements not to call upon it. François Hollande called it „a denial of democracy“ in 2006. Currently, the opposition considers it an „avowal of weakness“. That may be true, but this weakness was predicted by the *pouvoir constituant* and dealt with accordingly. The result of that prediction is an efficient tool that is indeed put to use. Yet, the use of it continues to shock and provoke outcry in the opposition and public opinion.

In all likelihood, Article 49-3 will remain indispensable in times of weak majority, yet invariably suffer partisan hypocrisy.

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